

**Low Kit Mining Company, a successor to Spangler Coal Company, Inc. and United Mine Workers of America, AFL-CIO. Cases 9-CA-28402 and 9-CA-29108-1, -3, -4, -6, -8**

February 8, 1994

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND TRUESDALE

On November 16, 1992, the National Labor Relations Board issued a Decision, Order, and Direction of Second Election,<sup>1</sup> *inter alia*, ordering Low Kit Mining Company, a successor to Spangler Coal Company, Inc. to reinstate and make whole four of its unit employees for loss of earnings and other benefits resulting from the Respondent's refusal to recall them in violation of the National Labor Relations Act. On August 25, 1993, the U.S. Court of Appeals for the Fourth Circuit issued an order enforcing the Board's Order.

A controversy having arisen over the amount of backpay due discriminatees, on July 8, 1993, the Acting Regional Director for Region 9 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated November 15, 1993, the Regional Attorney advised the Respondent, that no answer to the compliance specification had been received and that unless an appropriate answer was filed by November 23, 1993, summary judgment would be sought. The Respondent filed no answer.

On November 29, 1993, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. On December 2, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

**Ruling on the Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

<sup>1</sup> 309 NLRB 501.

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent of the amounts to the discriminatees, plus interest accrued on the amounts to the date of payment.

**ORDER**

The National Labor Relations Board orders that the Respondent, Low Kit Mining Company, a successor to Spangler Coal Company, Inc., Pond Gap, West Virginia, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), plus interest and minus tax withholdings required by Federal and state laws:

Kenneth E. Derrick	\$ 46,825.32
Rodney D. Lanham	54,614.72
Alan H. Nichols	56,000.00
Thomas Osborne, Jr.	56,175.22
<b>TOTAL:</b>	<b>\$213,615.26</b>

Dated, Washington, D.C. February 8, 1994

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD